

AMENDED IN ASSEMBLY MARCH 18, 1999

AMENDED IN ASSEMBLY MARCH 15, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 325

Introduced by Assembly Member Battin

February 11, 1999

An act to amend ~~Sections 667 and 1170.12~~ *Section 667.61* of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 325, as amended, Battin. Sentencing: *sex offenses*.

(1) Existing law provides that any person convicted of a felony violation of specified sex offenses, including the commission of lewd or lascivious acts upon a child by use of force, violence, or duress, under one or more specified circumstances shall be punished by imprisonment in the state prison for life, and shall not be eligible for release on parole for 25 years under specified circumstances, including a previous conviction for one of those sex offenses, or 15 years under other specified circumstances. Existing law also includes within these specified sex offenses the commission of lewd and lascivious acts upon a child without use of force, violence, or duress, unless the defendant qualifies for probation based on various findings, including a finding that the defendant is the victim's parent, relative, or is a member of the victim's household and a finding that a grant of probation to the defendant is in the child's best interest.

This bill would remove this latter exclusion applicable to convictions for lewd and lascivious acts upon a child without the use of force, violence, and duress where probation was granted, and would expand the list of specified sex offenses that are eligible for special circumstances enhancement under these provisions to include the continuous sexual abuse of a child.

(2) This bill, by making an existing sentencing enhancement applicable to a additional underlying offense, would impose additional costs upon prosecutors to plead and prove the elements of the new enhancement. By imposing additional duties on local agencies, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, known as “the three strikes law” and codified in 2 initiative statutes, prescribes alternative prison sentencing for any person convicted of a felony who has one or more prior serious or violent felony convictions. If a defendant has one prior felony conviction that has been pled and proved, the term of imprisonment imposed for the current felony conviction is twice the term otherwise provided as punishment for that conviction. If a defendant has 2 or more prior felony convictions that have been pled and proved, the term of imprisonment imposed for the current felony conviction is an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of (a) 3 times the term otherwise provided as punishment for each current felony conviction, (b) imprisonment in the state prison for 25 years, or (c) the term determined by the court for the underlying conviction plus any applicable enhancements. The initiative statutes provide that any amendment of these provisions requires a $\frac{2}{3}$ vote of the membership of each house of the Legislature.~~

~~This bill would provide that if a defendant is convicted of committing a lewd or lascivious act against a child under 14 years of age, or continuous sexual abuse of a child, and has one or more prior felony convictions for those crimes that have been pled and proved, the court shall sentence the defendant pursuant to the above provisions the same as if he or she had 2 or more prior felony convictions that have been pled and proved. This bill would make related conforming changes. Because the bill would constitute an amendment of those initiative statutes, the bill would require a $\frac{2}{3}$ vote.~~

Vote: $\frac{2}{3}$ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 667 of the Penal Code is~~
2 *SECTION 1. Section 667.61 of the Penal Code is*
3 *amended to read:*
4 667.61. (a) A person who is convicted of an offense
5 specified in subdivision (c) under one or more of the
6 circumstances specified in subdivision (d) or under two
7 or more of the circumstances specified in subdivision (e)
8 shall be punished by imprisonment in the state prison for
9 life and shall not be eligible for release on parole for 25
10 years except as provided in subdivision (j).
11 (b) Except as provided in subdivision (a), a person
12 who is convicted of an offense specified in subdivision (c)
13 under one of the circumstances specified in subdivision
14 (e) shall be punished by imprisonment in the state prison
15 for life and shall not be eligible for release on parole for
16 15 years except as provided in subdivision (j).
17 (c) This section shall apply to any of the following
18 offenses:
19 (1) A violation of paragraph (2) of subdivision (a) of
20 Section 261.
21 (2) A violation of paragraph (1) of subdivision (a) of
22 Section 262.
23 (3) A violation of Section 264.1.
24 (4) A violation of ~~subdivision (b) of~~ Section 288 *or*
25 288.5.

1 (5) A violation of subdivision (a) of Section 289.

2 (6) Sodomy or oral copulation in violation of Section
3 286 or 288a by force, violence, duress, menace, or fear of
4 immediate and unlawful bodily injury on the victim or
5 another person.

6 ~~(7) A violation of subdivision (a) of Section 288, unless~~
7 ~~the defendant qualifies for probation under subdivision~~
8 ~~(e) of Section 1203.066.~~

9 (d) The following circumstances shall apply to the
10 offenses specified in subdivision (c):

11 (1) The defendant has been previously convicted of an
12 offense specified in subdivision (c), including an offense
13 committed in another jurisdiction that includes all of the
14 elements of an offense specified in subdivision (c).

15 (2) The defendant kidnapped the victim of the
16 present offense and the movement of the victim
17 substantially increased the risk of harm to the victim over
18 and above that level of risk necessarily inherent in the
19 underlying offense in subdivision (c).

20 (3) The defendant inflicted aggravated mayhem or
21 torture on the victim or another person in the commission
22 of the present offense in violation of Section 205 or 206.

23 (4) The defendant committed the present offense
24 during the commission of a burglary, as defined in
25 subdivision (a) of Section 460, with intent to commit an
26 offense specified in subdivision (c).

27 (e) The following circumstances shall apply to the
28 offenses specified in subdivision (c):

29 (1) Except as provided in paragraph (2) of subdivision
30 (d), the defendant kidnapped the victim of the present
31 offense in violation of Section 207, 209, or 209.5.

32 (2) Except as provided in paragraph (4) of subdivision
33 (d), the defendant committed the present offense during
34 the commission of a burglary, as defined in subdivision
35 (a) of Section 460, or during the commission of a burglary
36 of a building, including any commercial establishment,
37 which was then closed to the public, in violation of Section
38 459.

39 (3) The defendant personally inflicted great bodily
40 injury on the victim or another person in the commission

1 of the present offense in violation of Section 12022.53,
2 12022.7, or 12022.8.

3 (4) The defendant personally used a dangerous or
4 deadly weapon or firearm in the commission of the
5 present offense in violation of Section 12022, 12022.3,
6 12022.5, or 12022.53.

7 (5) The defendant has been convicted in the present
8 case or cases of committing an offense specified in
9 subdivision (c) against more than one victim.

10 (6) The defendant engaged in the tying or binding of
11 the victim or another person in the commission of the
12 present offense.

13 (7) The defendant administered a controlled
14 substance to the victim by force, violence, or fear in the
15 commission of the present offense in violation of Section
16 12022.75.

17 (f) If only the minimum number of circumstances
18 specified in subdivision (d) or (e) which are required for
19 the punishment provided in subdivision (a) or (b) to
20 apply have been pled and proved, that circumstance or
21 those circumstances shall be used as the basis for imposing
22 the term provided in subdivision (a) or (b) rather than
23 being used to impose the punishment authorized under
24 any other law, unless another law provides for a greater
25 penalty. However, if any additional circumstance or
26 circumstances specified in subdivision (d) or (e) have
27 been pled and proved, the minimum number of
28 circumstances shall be used as the basis for imposing the
29 term provided in subdivision (a), and any other
30 additional circumstance or circumstances shall be used to
31 impose any punishment or enhancement authorized
32 under any other law. Notwithstanding any other law, the
33 court shall not strike any of the circumstances specified
34 in subdivision (d) or (e).

35 (g) The term specified in subdivision (a) or (b) shall
36 be imposed on the defendant once for any offense or
37 offenses committed against a single victim during a single
38 occasion. If there are multiple victims during a single
39 occasion, the term specified in subdivision (a) or (b) shall
40 be imposed on the defendant once for each separate

1 victim. Terms for other offenses committed during a
2 single occasion shall be imposed as authorized under any
3 other law, including Section 667.6, if applicable.

4 (h) Probation shall not be granted to, nor shall the
5 execution or imposition of sentence be suspended for, any
6 person who is subject to punishment under this section
7 for any offense specified in paragraphs (1) to (6),
8 inclusive, of subdivision (c).

9 (i) For the penalties provided in this section to apply,
10 the existence of any fact required under subdivision (d)
11 or (e) shall be alleged in the accusatory pleading and
12 either admitted by the defendant in open court or found
13 to be true by the trier of fact.

14 (j) Article 2.5 (commencing with Section 2930) of
15 Chapter 7 of Title 1 of Part 3 shall apply to reduce the
16 minimum term of 25 years in the state prison imposed
17 pursuant to subdivision (a) or 15 years in the state prison
18 imposed pursuant to subdivision (b). However, in no case
19 shall the minimum term of 25 or 15 years be reduced by
20 more than 15 percent for credits granted pursuant to
21 Section 2933, 4019, or any other law providing for conduct
22 credit reduction. In no case shall any person who is
23 punished under this section be released on parole prior to
24 serving at least 85 percent of the minimum term of 25 or
25 15 years in the state prison.

26 *SEC. 2. No reimbursement is required by this act*
27 *pursuant to Section 6 of Article XIII B of the California*
28 *Constitution because the only costs that may be incurred*
29 *by a local agency or school district will be incurred*
30 *because this act creates a new crime or infraction,*
31 *eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section*
33 *17556 of the Government Code, or changes the definition*
34 *of a crime within the meaning of Section 6 of Article*
35 *XIII B of the California Constitution.*

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Assembly, March 15, 1999 (JR 11)**

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